REMARKS/ARGUMENTS

The rejections presented in the Office Action dated December 23, 2008, (hereinafter Office Action) have been considered. Reconsideration of the pending claims and allowance of the application in view of the present response is respectfully requested.

Claims 9 and 10 have been canceled, without prejudice, rendering the rejections thereof moot. Applicant accordingly requests that each of the rejections of Claims 9 and 10 be withdrawn.

With respect to the objection to Claim 14, the claim has been rewritten in independent form in accordance with the Examiner's suggestions. Claim 14 is directed to an electronic audio device comprising an audio signal source, an audio output, and a dynamic range controller with an adaptive threshold while Claim 11 is directed to a dynamic range controller. Since Claim 14 is no longer a dependent claim, the objection is believed to be overcome, and Applicant accordingly requests that the objection be removed.

With respect to the § 101 rejection of Claim 8, Applicant respectfully traverses because the claim is not directed to a process as asserted. In contrast, the claim is directed to a computer program product, which is considered a statutory product consistent with the language of a Beauregard claim. *See, e.g.*, *Ex parte Bo Li*, Appeal 2008-1213 (BPAI 2008). However, Claim 8 has been amended from a computer program stored on a computer readable medium to recite a computer readable medium encoded with a computer program consistent with the requirements of MPEP § 2106.01. The claimed medium is not, and has not been shown to be, a signal or other nonstatutory subject matter. Claim 8 has also been amended to be in independent form. Since Claim 8 not directed to a process and conforms to the requirements of MPEP § 2106.01, the claim is believed to be properly directed to statutory subject matter, and Applicant requests that the rejection be withdrawn.

With respect to the § 112, second paragraph, rejection of Claim 2, the claim has been amended to characterize the word "speed" as referring to the speed of the controlling. This grammatical correction is believed to overcome the rejection; therefore, Applicant requests that the rejection be withdrawn.

Applicant respectfully traverses each of the prior art rejections (§§ 102(b) and 103(a)), each of which is based solely upon the teachings of U.S. Patent No. 5,729,611 to Bonneville (hereinafter "Bonneville"), because Bonneville does not teach or suggest each of the claimed limitations. For example, Bonneville does not teach reducing the power of the audio signal output to at least one of the received thresholds, *e.g.*, the output is reduced to said maximum power level for short time operation and/or the power of the output signal is reduced to said maximum power level for long time operation, as claimed in each of the independent claims. While Bonneville teaches that when a threshold is exceeded amplification is decreased, Bonneville does not teach or suggest that the amplification is decreased to that threshold. Rather, Bonneville's thresholds represent an overload condition where the goal is to restore power amplifier output to normal conditions, *e.g.*, where output amplification is less than either of the threshold values. Thus, Bonneville at least does not teach or suggest controlling the power of the audio signal output wherein the power of the output is reduced to said maximum power level for short time operation and/or wherein the power of the output signal is reduced to said maximum power level for long time operation, as claimed.

Bonneville also has not been shown to teach or suggest the limitations directed to long term control overriding short term control, as claimed. While Bonneville teaches that a first control signal acts even when the threshold of the second control is no longer exceeded, this is not an override since the second control would not be applicable anymore – the higher, second threshold is not exceeded. In contrast, Bonneville teaches that both control signals act independently and at the same time. Without a presentation of correspondence to each of the claimed limitations, the prior art rejections are improper.

With particular respect to the § 102(b) rejection, to anticipate a claim the asserted reference must teach every element of the claim. "A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference." *Verdegaal Bros. v. Union Oil Co. of California*, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987). The Federal Circuit also recently held that "Because the hallmark of anticipation is prior invention, the prior art reference—in order to anticipate

under 35 U.S.C. § 102—must not only disclose all elements of the claim within the four corners of the document, but must also disclose those elements 'arranged as in the claim.'" (Net Moneyin, Inc. v. Verisign, Inc., 545 F.3d 1359, 2008 WL 4614511 (Fed. Cir. 2008) quoting Connell v. Sears, Roebuck & Co., 722 F.2d 1542, 1548 (Fed. Cir. 1983)). Therefore, all claim elements and their limitations, must be found in the prior art reference to maintain the rejection based on 35 U.S.C. § 102. Applicant respectfully submits that Bonneville does not teach every element of independent Claims 1, 11, and 14 in the requisite detail and therefore fails to anticipate Claims 1-7 and 11-15.

Dependent Claims 2-7, 12, 13, and 15 depend from independent Claims 1, 11, and 14, respectively, and also stand rejected under 35 U.S.C. § 102(b) as allegedly being anticipated by Bonneville. While Applicant does not acquiesce with the particular rejections to these dependent claims, these rejections are also improper for the reasons discussed above in connection with the independent claims. These dependent claims include all of the limitations of their respective base claims and any intervening claims and recite additional features which further distinguish these claims from the cited reference. Therefore, the rejection of dependent Claims 2-7, 12, 13, and 15 is improper, and Applicant requests that the rejection be withdrawn.

With particular respect to the § 103(a) rejection of Claims 8 and 16, Applicant traverses because the asserted modifications fail to overcome the above-discussed deficiencies in the teachings of Bonneville. Specifically, modifying Bonneville's process to be implemented with a computer program would still fail to include reducing the power of the audio signal output to at least one of the received thresholds and overriding short term control with long term control as discussed above. Thus, the asserted modifications of the teachings of Bonneville do not teach each of the limitations of Claims 8 and 16, and the rejection should be withdrawn.

It should be noted that Applicant does not acquiesce to the Examiner's statements or conclusions concerning what would have been obvious to one of ordinary skill in the art, obvious design choices, inherent, common knowledge at the time of Applicant's invention,

officially noticed facts, and the like. Applicant reserves the right to address in detail the Examiner's characterizations, conclusions, and rejections in future prosecution.

Authorization is given to charge Deposit Account No. 50-3581 (BKS.001.WUS) any necessary fees for this filing. If the Examiner believes it necessary or helpful, the undersigned attorney of record invites the Examiner to contact the undersigned attorney to discuss any issues related to this case.

Respectfully submitted,

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